

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/608,790	<b>Applicant(s)</b> JAFFE, ALAN MICHAEL
	<b>Examiner</b> Jennifer Steele	<b>Art Unit</b> 1771

**–The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**

THE REPLY FILED 18 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on 17 July 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Claim 34 is new. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_.

Claim(s) objected to: \_\_\_\_.

Claim(s) rejected: 1-3, 5, 7, 9, 11-23, 25-29 and 31-34.

Claim(s) withdrawn from consideration: 30.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_.

13.  Other: \_\_\_\_.

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1771

Applicants arguments are not persuasive. Applicant argues there is no motivation to combine Gill and Lehnert, the previous office action rejection is maintained. Applicant argues that Gill does not teach the features lacking in Gill. Examiner maintains that Gill teaches the features of glass fiber size and the teachings of Gill and Lehnert present a reasonable expectation of success and therefore obvious to combine Lehnert and Gill. With respect to applicants arguments stating that it would be reasonable for one of ordinary skill in the art to determine that the air permeability of Gill is lower than the current application and therefore does not teach to the applicants invention. Examiner submits that it is the responsibility of the applicant to submit evidence to support that the structure of the claimed invention does indeed possess properties different than the prior art and therefore meets the requirement of expected success.

Examiner maintains the previous office action of Lehnert in view of Gill in view of Graves. Graves teaches glass fibers and the features that would provide a reasonable expectation of success and therefore predictable results.

Applicant argues that Kajander is not prior art over the current application and Kajander is owned by the same assignee. Kajander is considered prior art under 102(a) and therefore 103(c) is not applicable. Also, it is noted that Assignment records alone are not sufficient to properly invoke 103(c) because they do not provide evidence of common ownership at the time the claimed invention was made. However, as noted above, since Kajander qualifies as prior art under 102(a), 103(c) cannot be invoked to remove the Kajander reference.

Applicant argues there is not motivation to combine the features of Carbo with Lehnert and Gill. Examiner maintains the previous office action rejection and states that Carbo is not used to teach the structure of the claimed invention but is relied upon teach the feature of a biocide.